

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE VALVE ANTITRUST LITIGATION

No. 2:21-cv-00563-JCC

**STIPULATED SUPPLEMENTAL
PROTECTIVE ORDER**

**NOTE ON MOTION CALENDAR:
SEPTEMBER 25, 2023**

WHEREAS, the protections set forth in the Stipulated Protective Order (“Protective Order”) in the above-captioned case (“Litigation”), *see* Dkt. No. 95, apply and are available to non-parties as well as parties; and

WHEREAS, Plaintiffs and Defendants have served subpoenas on non-parties Electronic Arts, Inc., Nintendo of America Inc., and Ubisoft, Inc. (“Requesting Companies”) that seek certain documents and information relating to Plaintiffs’ claims and Defendant’s defenses; and

WHEREAS, prior to the disclosure in this matter of their confidential information, Requesting Companies have requested protections in addition to those set forth in the Protective Order;

WHEREFORE, IT IS HEREBY ORDERED that “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” documents or information disclosed or produced by Requesting Companies, or disclosed or produced by parties to the extent such documents or information

1 contain “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” material of Requesting
2 Companies, shall be subject to the following provisions:

3 1.1 The definitions, terms and provisions contained in the Protective Order shall
4 be incorporated herein by reference as though fully set forth herein; provided, however, that in the
5 event of a conflict between any definition, term, or provision of this Supplemental Protective Order
6 and any definition, term, or provision of the Protective Order, this Supplemental Protective Order
7 shall control with respect to such conflict.

8 1.2 For purposes of production or use of information or items designated
9 “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” by Requesting Companies, the
10 term “Expert” shall mean a person with specialized knowledge or experience in a matter pertinent
11 to the litigation who: (1) has been retained by a party or its counsel to serve as an expert witness
12 or as a consultant in this action; (2) is not a past or current employee of a party, a party’s
13 competitor, or a competitor of the designating Requesting Company; (3) at the time of retention,
14 is not anticipated to become an employee of a party, a party’s competitor, or a competitor of the
15 designating Requesting Companies; and (4) has signed the “Acknowledgment and Agreement to
16 Be Bound” (Exhibit A).

17 1.3 Unless otherwise ordered by the Court or permitted in writing by the party
18 or Requesting Company designating such material, all information or items designated as
19 “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” by Requesting Companies shall
20 not be disclosed to any person except: (1) Experts (as defined in this Order) to whom disclosure is
21 reasonably necessary for this litigation; and (2) those listed in subparagraphs (a), (d), (e), (g) and
22 (h) of paragraph 4.2 of the Protective Order.

23 1.4 Notwithstanding the foregoing paragraph, information or items designated
24 as “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” by Requesting Companies may
25 also be disclosed to a person with specialized knowledge or experience in a matter pertinent to the
26 litigation who has been retained by a party or its counsel to serve as an expert witness or as a

1 consultant in this action and who is a past or current employee of a competitor of a party, a party's
2 competitor, or a competitor of the designating Requesting Company or anticipated to become
3 one, provided that before such disclosure, the person shall be identified to the designating
4 Requesting Company (the "Notice") along with the name of the company in which the person has
5 been or currently is an employee or anticipates becoming an employee, and shall also sign the
6 "Acknowledgment and Agreement to Be Bound" (Exhibit A).

7 (a) A party that provides the Notice to the designating Requesting Company pursuant
8 to Paragraph 1.4 may disclose the subject of the protected material to the identified expert or
9 consultant unless, within seven (7) calendar days of delivering the Notice, the party receives a
10 written objection from the designating Requesting Company. Any such objection must set forth in
11 detail the grounds on which it is based.

12 (b) A party that receives a timely written objection must meet and confer with the
13 designating Requesting Company to try to resolve the matter by agreement within seven (7)
14 calendar days of the written objection. If no agreement is reached, the Requesting Company
15 seeking to prevent the disclosure to the expert or consultant may, if necessary, file a motion in
16 accordance with the Local Civil Rules to prevent disclosure. Any such motion must describe the
17 circumstances with specificity, set forth in detail the reasons why the disclosure to the expert or
18 consultant should be prohibited, assess the risk of harm that the disclosure would entail, and
19 suggest any additional means that could be used to reduce that risk. The burden to demonstrate
20 why disclosure should be prohibited shall rest with the designating Requesting Company.

21 2. Unless otherwise ordered by the Court or expressly permitted by the designating
22 Requesting Company, no party may file with the Court, or introduce any information or item of
23 Requesting Company that has been designated "HIGHLY CONFIDENTIAL – ATTORNEY'S
24 EYES ONLY" at trial in a manner that will result in disclosure to persons other than: (1) Experts
25 (as defined in this Order); (2) persons described in paragraph 1.4 above; and (3) those listed in
26 subparagraphs (a), (d), (e), (g) and (h) of paragraph 4.2 of the Protective Order. In the event a

1 Party seeks to file with the Court, or introduce any information or item of Requesting Companies
2 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at trial in a manner that
3 will result in disclosure to persons other than (1) Experts (as defined in this Order), (2) persons
4 described in paragraph 1.4 above, and (3) those listed in subparagraphs (a), (d), (e), (g) and (h) of
5 paragraph 4.2 of the Protective Order, the Party shall promptly notify in writing the designating
6 Requesting Company so that the provisions of paragraphs 4.4 and 5.2(b) of the Protective Order
7 may be carried out. The Parties recognize that the purpose of this provision is to provide a
8 reasonable opportunity to object to the disclosure of information or items designated “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at trial to persons other than Experts (as
10 defined in this Order) and those specified in Paragraph 4.3 of the Protective Order (Dkt. 95), and
11 agree to provide the notice described in this paragraph with reasonable advance notice such that
12 the Requesting Company may raise any objection.

13 3. Any time a document produced by a Requesting Company that it has designated as
14 CONFIDENTIAL or HIGHLY CONFIDENTIAL is disclosed in a deposition, whether marked as
15 an exhibit or not, the Requesting Company will be notified and have the 40 days in paragraph
16 5.2(b) of the Protective Order to designate that portion of the transcript containing the non-party’s
17 CONFIDENTIAL or HIGHLY CONFIDENTIAL information as CONFIDENTIAL or HIGHLY
18 CONFIDENTIAL.

19 4. For avoidance of doubt, the rights and obligations in paragraph 4.4 of the Protective Order
20 apply equally to the filing of Requesting Companies’ designated confidential material or information
21 and items designated HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.
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24 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

25 DATED this 25th day of September, 2023.
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/s/ Stephanie L. Jensen

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
4 state proceeding, constitute a waiver by the producing party or non-party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.

7 DATED this 26th day of September 2023.

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11 John C. Coughenour
12 UNITED STATES DISTRICT JUDGE
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